



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201110014

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 14 2010

U.I.L. 408.03-00

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

T:EP:RA:T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Bank B = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Bank C = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount E = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount G = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Individual F = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx and xxxxxxxxxx, submitted by you, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

You assert that your failure to accomplish a rollover of Amount E into an IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to

an error committed by Individual F of Bank C. You further assert that you relied on the statement of Individual F of Bank C who mistakenly advised you that the retirement funds could be removed for 90-days without penalty.

You state that you maintained IRA X with Bank B. On xxxxxxxxx, you withdrew Amount D from IRA X and subsequently deposited the funds at Bank C. You further state that you withdrew Amount D from IRA X based on the prediction that Bank B would fail and you were afraid of losing your savings. You assert that at Bank C, you spoke with Individual F who told you that it was 90-days to rollover the retirement funds into a rollover IRA without penalty and advised you that you had 90 days to evaluate the financial stability of Bank B.

You assert that you relied upon Individual F's statement that Amount D could be rolled over into a rollover account within 90 days. You state that while Amount D was in Bank C, a small portion of it totaling Amount G was used for business purposes for less than 30 days to reduce interest expense on the bank credit line. You further state that on xxxxxxxxxxxx, you deposited Amount D to a SEP-IRA account with Bank B when its financial condition subsequently improved. You also state that you learned about the 60 day rollover requirement when you received a notice from the Internal Revenue Service on xxxxxxxxxxxx.

In an email dated xxxxxxxxxxxx, Individual F of Bank C admitted his error of advising Taxpayer A incorrectly about the period required for a valid rollover.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount E from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a rollover of Amount E was caused by your reliance on Individual F's false statement about the time period required for a valid rollover. In an email dated xxxxxxxxxxxxxx, Individual F acknowledged his mistake in advising Taxpayer A improperly about the timing of making a valid rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount E from IRA X. Provided all other requirements of Code section 408(d)(3), except

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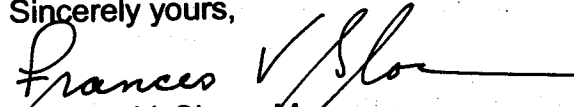
the 60-day requirement, are met with respect to such IRA contribution, the Service will treat the contribution of Amount E to a SEP-IRA account with Bank B as a rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxx.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437